

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

No. 245

EDWARD AND JOHN BURKE, LIMITED, APPELLANT,

vs.

DAVID H. BLAIR, COMMISSIONER OF INTERNAL
REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

FILED MARCH 15, 1913

(29,456)

(29,456)

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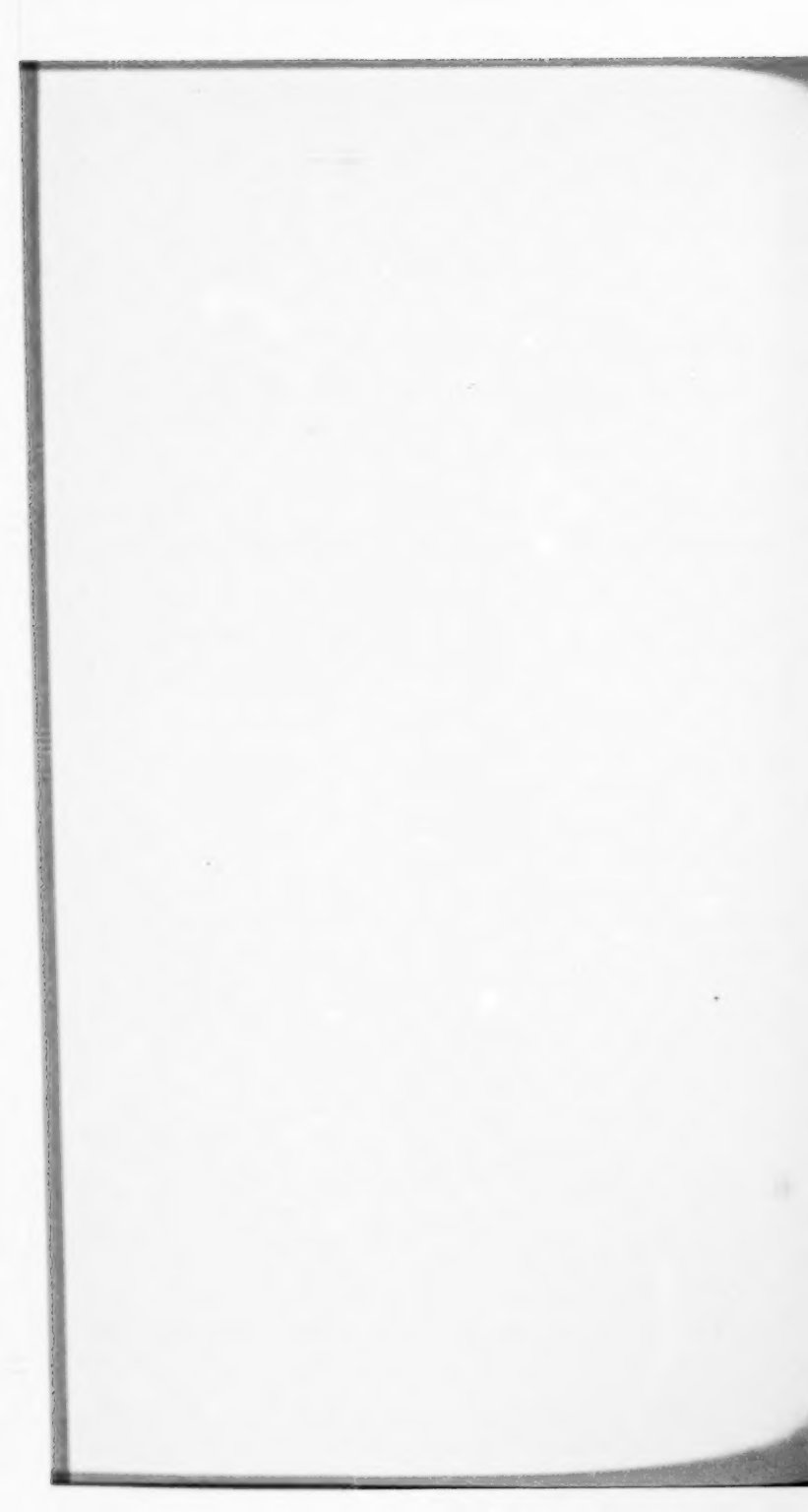
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[fol. 1]

IN THE

**DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK**

In Equity

EDWARD AND JOHN BURKE, LIMITED, Complainant,
against

DAVID H. BLAIR, Commissioner of Internal Revenue; E. C. Yellowley, Acting Federal Prohibition Director for the State of New York, and William Hayward, United States Attorney for the Southern District *District* of New York, Defendants.

BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The complainant, Edward and John Burke, Limited, brings this its bill of complaint against the above-named defendants and re-[fol. 2] spectfully shows as follows:

I. Complainant, Edward and John Burke, Limited, is a corporation duly organized and existing under the laws of the State of New York, with its principal place of business in the City of New York.

II. Complainant is informed and verily believes, and therefore alleges on information and belief:

That defendant David H. Blair is the duly appointed and acting Commissioner of Internal Revenue of the United States; that defendant E. C. Yellowley is a subordinate of the Commissioner of Internal Revenue, and is the Acting Federal Prohibition Director for the State of New York; that these defendants and their subordinates are by law charged with the duty of enforcing the terms and provisions of acts of Congress passed under the authority of the Eighteenth Amendment to the Constitution of the United States, including the National Prohibition Act, approved October 28, 1919, and including also the Act of Congress approved November 23, 1921, entitled "An Act Supplemental to the National Prohibition Act," commonly known as the Willis-Campbell Act, and the regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for the enforcement of said Acts.

That defendant William Hayward is the duly appointed and acting United States District Attorney for the Southern District of New York, and is charged with the duty of prosecuting offenders against said Acts of Congress and the said regulations.

III. This is a suit of a civil nature, arising under the Constitution and the laws of the United States. The matter in controversy [fol. 3] exceeds the sum or value of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

IV. Edward and John Burke, Limited, a corporation created under the laws of the United Kingdom of Great Britain and Ireland and located at Dublin, Ireland, has been engaged for more than seventy years in various activities, including the bottling, marketing and distributing, in the markets of the world, of an intoxicating liquor known as Guinness's Stout. Many years ago it established and, until the incorporation of the complainant in 1919, maintained in New York City a branch of its business, which included the importation, sale and distribution of Guinness's Stout throughout the United States. Through the activities of this branch there was established in this country a large demand and a favorable market for Guinness's Stout, its annual gross sales thereof, prior to the war restrictions imposed by the Government of the United States, amounting to from \$500,000 to \$700,000, and yielding large profits. Complainant was incorporated under the laws of the State of New York on or about November 18, 1919, as a subsidiary of the English corporation above-named, to carry on the business previously carried on by said branch, and on that date succeeded to all the property, rights, trade-mark, trade name, stock on hand, and other assets of said corporation used or employed in carrying on business in this country, and since that time, to the extent permitted by law as hereafter stated, complainant has been carrying on and conducting the business formerly carried on and conducted by the United States branch of said English corporation.

V. At the time of the passage of the National Prohibition Act, complainant had on hand as a part of its stock in trade a large [fol. 4] amount of Guinness's Stout, theretofore lawfully acquired and then lawfully held, upon which all taxes had been duly paid. The said Act permitted the sale of intoxicating liquors, including stout, for medicinal purposes, and complainant, believing that the same could be lawfully sold for such purposes, did not attempt to export it, which would have involved a serious financial loss. In October, 1921, the Treasury Department prepared and promulgated regulations under the National Prohibition Act, which permitted the sale of Guinness's Stout for medicinal purposes, and complainant, in accordance with such regulations, duly prepared, and on November 10, 1921, filed its application with the Federal Prohibition Director for the State of New York for a permit to sell its said stout for medicinal purposes. The Prohibition Director had been expressly authorized on November 5, 1921, by the Federal Prohibition Commissioner to issue a permit to complainant to sell its Guinness's Stout for medicinal purposes, but in anticipation of the passage of said Willis-Campbell Act, which was passed and approved November 23, 1921, he refused to issue to complainant the permit so requested as aforesaid, and after the passage of the said Act re-

fused to issue to complainant any permit whatsoever to sell its said stout for medicinal purposes upon the ground that said Act had made the sale of stout for medicinal purposes unlawful. At the time of the passage of the Wilks-Campbell Act the complainant had on hand, and still has on hand, a large quantity of Guinness's Stout, of the fair value of Thirty-five Thousand Dollars (\$35,000), lawfully acquired and lawfully held, upon which all taxes had been paid, and which will be wholly lost to it unless relief be granted it by this court. Complainant's right to continue to import and sell [fol. 5] Guinness's Stout for medicinal purposes is a valuable property right, and this will be destroyed, likewise, unless relief be granted it by this court, and complainant will suffer great and irreparable damage thereby, the extent of which it is impossible to estimate.

VI. Guinness's Stout, as imported into this country and as heretofore sold by complainant, consists solely of pale malt, hops, and a certain amount of roast malt or barley, with the addition of water. Its alcoholic content, by volume, is from seven to eight per cent. Complainant is informed and believes and therefore alleges that its use in England and foreign countries, and also in the United States during the period in which its sale was permitted, is largely and predominately for medicinal purposes; and that its use in this country for beverage purposes was slight and negligible in comparison with its use as a medicine and for general non-beverage purposes. Complainant and its predecessor for many years habitually advertised its Guinness's Stout to the trade as a valuable medicinal agent in pulmonary troubles, as useful to nursing mothers, in convalescent cases, for persons in a low or run-down state of health, etc. Over fifty per cent of the sales of Guinness's Stout made by complainant and its predecessor in the United States were made directly to wholesale druggists and grocers in New York, Boston, Philadelphia, Washington, Pittsburgh, Chicago, Milwaukee, Saint Paul, Minneapolis, Kansas City, Saint Louis, New Orleans, and other cities.

Prior to the prohibition of the sale of stout in this country, it was generally and habitually prescribed by a very large number of eminent and reputable physicians in the bona fide belief that it possessed curative powers, as well as health-giving and strength-producing [fol. 6] properties. Complainant's predecessor in 1904, with no National Prohibition legislation then in view and for the purpose of securing data to be used in opposition to a proposed increase in the tariff on stout, sent out questionnaires to a large number of eminent and reputable physicians of New York and elsewhere, fairly representative of the medical profession generally, asking them to state whether, in their judgment, Guinness's Stout possessed medicinal value, and if so, in what cases they prescribed it. Four hundred thirty-five (435) replies were received, from which it appeared that 96 did not prescribe stout as a medicine, and 339, or 78 per cent., stated that in their judgment stout possessed valuable medicinal qualities, and that they habitually prescribed it for their patients, designating the cases in which they felt it was a proper and useful medi-

cine. Complainant alleges, upon information and belief, that the foregoing is fairly typical of views entertained by physicians as to the medicinal value of Guinness's Stout.

Standard works on the practice of medicine regard stout as possessing medicinal qualities and recommend its use as a curative agent in many cases of disease and ill health.

VII. The Willis-Campbell Act purports to provide that only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void, and severe penalties are provided by it and by the National Prohibition Act for violations of its terms and for violations of the regulations of the Commissioner of Internal Revenue made for its enforcement. The defendants claim that this provision of the Willis-Campbell Act is valid, and, based upon such claim, the defendant Acting Federal Prohibition Director and his predecessor in office have refused, and the said defendant still refuses, to issue [fol. 7] to complainant a permit to sell its stout for medicinal purposes, and have likewise refused to issue to pharmacists permits to purchase said stout, and to physicians permits to prescribe the same for medicinal purposes. The defendants threaten to arrest and prosecute complainant's agents, servants and employees if it undertakes to sell stout for medicinal purposes, and to arrest and prosecute pharmacists if they purchase the same for medicinal purposes, and physicians if they prescribe the same for medicinal purposes. Complainant is lawfully entitled, for reasons stated in the following paragraph, to sell its stout for medicinal purposes, and pharmacists are lawfully entitled to purchase the same for that purpose, and physicians are lawfully entitled to prescribe the same for their patients; but if complainant attempts to exercise this right, or if such others undertake to exercise their rights, the defendants, without lawful warrant or authority so to do, threaten to and, unless restrained by this court from so doing, will institute a multiplicity of suits and prosecutions and insist upon the imposition of severe penalties, including fines and imprisonment and various forfeitures of property provided by the Acts of Congress and said regulations, and complainant's property and business will be unlawfully taken and destroyed, all to its irreparable damage. The penalties imposed by said Acts for a violation thereof are so large and severe as to deter complainant from asserting its rights except through the aid of a court of equity.

VIII. Complainant is advised by counsel and verily believes that the Willis-Campbell Act, in so far as it prohibits the prescribing of complainant's stout for medicinal purposes and making void all permits to prescribe, and prescriptions for it, is unconstitutional and void because it is an unauthorized and unlawful attempt on the part [fol. 8] of Congress to legislate over a subject matter not delegated to it by the Eighteenth Amendment, or by any other provision of the Federal Constitution, but reserved to and remaining within the exclusive control of the several States of the Union. Complainant is

also advised by counsel and verily believes that the Act is unconstitutional and void because it, in effect, prohibits the sale and use of complainant's stout for medicinal purposes while permitting the sale of all vinous and spirituous liquors for medicinal purposes, although they contain a larger alcoholic content, and are much more likely to be used for beverage purposes, and is, therefore, as to complainant, arbitrary and unreasonable, and if enforced, its effect will be to deprive complainant of its property without due process of law, and to take its property for public use without just compensation, in violation of the Fifth Amendment to the Federal Constitution. The said regulations of the Commissioner of Internal Revenue, under which the defendant Prohibition Director refuses to issue permits to complainant to sell, to pharmacists to purchase, and to physicians to prescribe the complainant's stout, and under which the defendants threaten to prosecute complainant and such others as aforesaid, are, as complainant is advised by counsel and verily believes, null and void for the reasons above stated. The laws of the State of New York, where complainant's place of business is located, permit the sale of stout for medicinal purposes, and these laws, complainant is informed by counsel and verily believes, are valid and are the measure of complainant's rights.

IX. Forasmuch, therefore, as complainant is without remedy in the premises except in a court of equity, and to the end that it may obtain from this Honorable Court the relief to which it is entitled, it respectfully prays that the above-named defendants, and each of them, be directed to make a full, true and perfect answer to this bill of complaint, but not under oath, an answer under oath being expressly waived, and that said defendants, their agents, servants and employees, and each and every one of them, be enjoined and restrained from in any manner enforcing, or attempting to enforce or cause to be enforced against the complainant, its officers, servants and employees, or any of them, any of the pains, penalties or forfeitures provided in and by the aforesaid Acts of Congress or any rules or regulations of the Commissioner of Internal Revenue, issued with the approval of the Secretary of the Treasury, in so far as said Acts of Congress or said rules or regulations purport to prohibit the sale by complainant of Guinness's Stout to pharmacists for medicinal purposes, and from arresting and prosecuting the complainant, its officers, servants and employees, or any of them, by reason of making any such sale or sales, and that defendant E. C. Yellowley be enjoined and restrained from refusing to issue to complainant and to pharmacists and to physicians permits for the sale and purchase of Guinness's Stout for medicinal purposes, and for the bona fide prescription thereof by physicians for their patients.

Complainant further prays that it be granted a restraining order and preliminary injunction pending the final hearing in this case whereby the said defendants, their agents, servants and employees, and each and every one of them, may be enjoined and restrained as heretofore prayed, and that upon the final hearing said injunction be made perpetual.

Complainant further prays that a writ of subpoena be issued herein directed to the said defendants, and each of them, commanding them [fol. 10] on a day set to appear and answer the bill of complaint herein.

Edward and John Burke, Limited, By Tobias C. Fogel,
President. Moore & Bell, Solicitors for Complainant, 25
Broad Street, Borough of Manhattan, New York City.

AFFIDAVIT OF TOBIAS C. FOGEL TO ABOVE PAPER

[Omitted in printing]

[fol. 11] IN UNITED STATES DISTRICT COURT

EQUITY SUBPÆNA

The President of the United States of America to David H. Blair, Commissioner of Internal Revenue; E. C. Yellowley, Acting Federal Prohibition Director for the State of New York, and William Hayward, United States Attorney for the Southern District of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Edward and John Burke, Limited, and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 22d day of November, in the year One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

Alex Gilchrist, Jr., Clerk. Moore & Bell, Plaintiff's Sol'rs.

[fol. 12] The Defendants are required to file their answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

Alex Gilchrist, Jr., Clerk. (Seal.)

U. S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEARANCE AND DEMAND

You will please take notice that I am retained by, and appear as attorney for, the Defendants in this action, and demand service of a copy of the complaint and all papers in this action upon me, at my office in the United States Court and Post Office Building, in the City of New York, Borough of Manhattan.

Yours, William Hayward, United States Attorney, Attorney for Defendants. New York, December 13, 1922. To Messrs. Moore & Bell, #25 Broad Street, Attorneys for Plaintiff.

[fol. 13] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER, WITH NOTICE OF FILING

Now come the defendants and for an answer to the bill of complaint herein by their attorney William Hayward, United States Attorney for the Southern District of New York, respectfully allege:

First. Defendants move that the bill of complaint herein and divers parts thereof be dismissed and assign the following grounds for this motion, namely:

1. The suit is in effect one against the United States and does not aver or show that the United States has consented to be sued herein.
2. The court has no jurisdiction to grant the relief prayed for or any part thereof.
3. The bill does not present a cause of action in equity under the Constitution of the United States.
4. The bill does not disclose a cause of action equitable in its nature, civil in its character and arising under the Constitution of the United States.
5. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

[fol. 14] 6. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Second. Defendants have no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph VI of the complaint, but deny on information and belief that Guinness's Stout has any therapeutic value or that it possesses curative powers

or that it has health-giving and strength-producing properties. Defendants further allege on information and belief that standard works on practice and the science of physiology and biology maintain that neither stout nor any other malt liquors possess any medicinal quality, and deprecate the use of such alcoholic beverages as curative agents.

Third. Defendants deny the allegation contained in Paragraph VII of the bill of complaint, that complainant is lawfully entitled to sell its stout for medicinal purposes, and further deny that pharmacists are lawfully entitled to purchase said stout for medicinal purposes, and further deny that physicians are lawfully entitled to prescribe the same for their patients. Defendants further deny that threats which they have made to enforce the law against the prescription of stout for medicinal purposes are without lawful warrant or authority.

Fourth. Defendants deny the allegations in Paragraph VIII of the complaint in so far as it is therein alleged that the Willis-Campbell Act is unconstitutional and void, and further deny so much of said paragraph as alleged that the regulations of the Commissioner of Internal Revenue under which the Prohibition Director refuses to issue permits for the sale, purchase and prescription of complainant's stout are unconstitutional and void.

Wherefore the defendants pray that the bill of complaint herein be dismissed and that the defendants have such other and further [fol. 15] relief as to the Court may seem just and that the defendants recover their costs and disbursements herein.

William Hayward, United States Attorney for the Southern District of New York, Attorney for Defendants. Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

(Endorsed)

SIR:

You will please take notice that an answer of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the Clerk of the U. S. Dist. Court, S. D. N. Y.

Dated, N. Y., Dec. 19, 1922.

Yours, etc., William Hayward, U. S. Attorney, Attorney for Defendants. To Messrs. Moore & Bell, Attorneys for Compl.

[fol. 16] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

NOTICE OF MOTION TO DISMISS

SIRS:

Please take notice that the undersigned will move this Court at a term thereof to be held in Room 237 United States Courts and Post Office Building, Borough of Manhattan, City of New York, on January 19, 1923, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing the complaint on the several grounds set out in Paragraph First of the answer herein and for such other and further relief as to the Court may seem just.

Dated, New York, N. Y., January 17, 1923.

Yours, etc., William Hayward, United States Attorney for
the Southern District of New York, Attorney for Defend-
ants. Office and Post Office Address: U. S. Courts & P. O.
Bldg., Borough of Manhattan, City of New York.

[fol. 17] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

STIPULATION AS TO HEARING

It is hereby stipulated and agreed between the attorneys for the respective parties to the above entitled action that the hearing upon the defendants' motion to dismiss the bill of complaint herein shall be and the same hereby is adjourned from the 12th day of January, 1923, to the 19th day of January, 1923.

Dated, New York, January 10, 1923.

Moore & Bell, Attorneys for Complainant. William Hay-
ward, Attorney for Defendants.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM, KNOX, J.

Most, if not all of the matters of substance set forth in complainant's bill as a basis for the relief asked seem to be well within the

ruling of Judge Garvin in the case of Piel Bros. v. Day, 278 Fed. 223, affirmed in 281 Fed. 1022. So far as the alleged discrimination of the Willis-Campbell bill against malt liquors is concerned, I think that in so legislating Congress did not go without the bounds of any constitutional limitation. The within motion will be granted and complainant's bill dismissed.

Jno. C. Knox, U. S. D. J. 2/27/23.

[fol. 19] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

DECREE

This cause came on to be heard this term upon motion by the defendants to dismiss the bill of complaint, and was argued by counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the bill of complaint be dismissed and that defendants have judgment against the complainants for their costs to be taxed.

L. Hand, United States District Judge for the Southern District of New York. Dated, March 2d, 1923.

[fol. 20] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL

The above-named complainant conceiving itself aggrieved by a decree made and entered on the 2d day of March, 1923, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that the transcript of the record, pleadings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Moore and Bell, Solicitors for Complainant.

The foregoing claim for appeal is allowed.

L. Hand, United States District Judge for the Southern District of New York. Dated, March 2d, 1923.

[fol. 21] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

The complainant hereby assigns error in the final judgment or decree of the District Court herein entered March 2, 1923, in the following respects:

First. The Court erred in dismissing the bill of complaint herein.

Second. The Court erred in holding that the Act of Congress, approved November 23, 1921, entitled "An Act Supplemental to the National Prohibition Act," commonly known as the Willis-Campbell Act, was duly passed in the lawful exercise of constitutional authority in so far as it purports to prohibit the prescription and use of malt liquors, including Guinness's Stout, for medicinal purposes.

Third. The Court erred in failing and refusing to hold that the said Act of Congress is unconstitutional and void in the particular above stated because in excess of the constitutional power of Congress to enact the same.

Fourth. The Court erred in holding that Congress, under the [fol. 22] Eighteenth Amendment to the Constitution of the United States, possesses the lawful power to prohibit the use of malt liquors, including Guinness's Stout, for medicinal purposes.

Fifth. The Court erred in failing and refusing to hold that the regulation of the use of malt liquors, including Guinness's Stout, for medicinal purposes is exclusively within the control of the several States.

Sixth. The Court erred in holding that it is within the power of Congress by legislative fiat to declare that malt liquors, including Guinness's Stout, have no therapeutic or medicinal value, and that such declaration is binding upon the courts of the United States.

Seventh. The Court erred in failing and refusing to hold that the question whether malt liquors, including Guinness's Stout, possess a therapeutic or medicinal value is a judicial question, to be determined by the courts.

Moore and Bell, Solicitors for Complainant.

[fols. 23-25] DISTRICT COURT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND
CIRCUIT

[Title omitted]

BOND ON APPEAL [for \$250.00; filed and approved Mar. 6, 1923;
omitted in printing]

[fol. 26] CITATION ON APPEAL [Omitted in printing]

(Endorsed:) Copy received. March 3, 1923. Wm. Hayward,
U. S. Attorney.

[fol. 27] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION FOR RECORD ON APPEAL

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following portions of the record shall constitute the transcript and record on appeal in this case, and that the Clerk of the District Court shall transmit only the papers herein designated:

1. Original bill of complaint.
2. Subpoena.
3. Defendants' notice of appearance and demand.
4. Answer to the bill of complaint.
5. Defendants' notice of motion, dated January 17, 1923.
6. Stipulation adjourning hearing from January 12 to January 19, 1923.
7. The opinion of the court filed in this cause.
8. The decree entered in this cause on March 2, 1923.
9. Petition for, and order allowing, appeal.

[fol. 28] 10. Assignment of errors filed by complainant.

11. The bond of complainant on appeal.
12. The citation issued on such appeal, with acknowledgment of service.
13. Stipulation for record on appeal.

Dated, New York, March 5, 1923.

Moore & Bell, Solicitors for Complainant. William Hayward,
Attorney for Defendants.

[fol. 29] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, March 9, 1923.

Moore & Bell, Attorneys for Complainant. Wm. Hayward,
U. S. Attorney, Attorney for Defendants.

O. K. W. J. E.

[File endorsement omitted.]

[fol. 30] UNITED STATES OF AMERICA,
Southern District of New York, ss:

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 9th day of March in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the said United States the one hundred and forty-seventh.

Alex. Gilchrist, Jr., Clerk. (Seal of District Court of the
United States, Southern District.)

Endorsed on cover: File No. 29,456. S. New York D. C. U. S. Term No. 245. Edward and John Burke, Limited, appellant-, vs. David H. Blair, Commissioner of Internal Revenue, et al. Filed March 15th, 1923. File No. 29,456.